IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6/2000, 7/2000
with
FIRST APPEAL No 551/2000

with

CIVIL APPLICATION No 2133 of 2002
in
CIVIL REVISION APPLICATION No 222 of 2002

with
CIVIL REVISION APPLICATION No 222 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

VASHRAMBHAI ALAJIBHAI VAGHELA DECD. THRO' HEIRS SHANTABEN
Versus
GOVINDBHAI J CHUNVALIYA

Appearance:
1. First Appeal No. 6/2000 & 7/2000
MR Y.S.LAKHANI with MR.A.M.DAGLI for Appellants No. 1-3/5
MR GOVINDBHAI CHUNVALIYA - party-in-person for Respondents.

2. First Appeal No.551/2000

MR GOVINDBHAI CHUNVALIYA party-in-person for Appellant.
MR Y.S.LAKHANI with MR A.M.DAGLI for Respondents.

3. CIVIL REVISION APPLICATION No.222 of 2002
MR MJ SHELAT for Petitioners.
MR GOVINDBHAI CHUNVALIYA party-in-person for Respondent.

4. CIVIL APPLICATION No.2133 of 2002 in CRA 222/2002
MR GOVINDBHAI CHUNVALIYA for Applicant
MR MJ SHELAT for Respondents.

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 11/07/2002

COMMON C.A.V. JUDGEMENT

1. Vaghela Vashrambhai Alajibhai since deceased through his heirs and legal representatives appellants (original defendants) have filed these appeals under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 30th November, 1999, passed by the learned Judge, City Civil Court No.24, Ahmedabad, in Regular Civil Suit No. 2500 of 1993. It may be noted that the said appellants have also filed First Appeal No.7 of 2000 against the said judgment wherein the learned Judge has passed a common order alongwith Regular Civil Suit No.2500/93 & Regular Civil Suit No.5393 of 1993 also. By the impugned judgment the learned Judge was pleased to allow Regular Civil Suit No.2500/93 in favour of the plaintiff - opponent herein and directed the defendants and persons claiming through them were perpetually restrained from making any construction in the suit land i.e. Final Plot No.68/1/B. The learned Judge further held that the defendants to remove the encroachment made by them on the land of Final Plot No.68/1/B and to hand over vacant and peaceful possession of the land by removing all the encroachments made thereon within three months from the date of judgment. The learned Judge, by the said judgment, so far as Regular Civil Suit No.5393/93 is concerned, directed that defendant No.1 has only acquired right of collecting rent in respect of suit land and, therefore, as such the plaintiff is not entitled to get the relief of declaration that the sale deed Exh.116 dated 13th April, 1992, is illegal, null and void.

2. It may be noted that so far decree passed against Govindbhai J.Chuvaliya - plaintiff in the suit has also

filed First Appeal No.551 of 2000 before this Court against the same judgment and decree.

3. I have referred the appellant as original defendant and the respondents as original plaintiff in this behalf for the sake of convenience.

4. The relevant facts giving rise to these appeals are as under:-

4.1 There is a land situated at District Ahmedabad, at Geeta Mandir Road, Moje Rajpur Hirpur Sim, Survey No.405 in Jamalpur Town Planning Scheme No.1, Final Plot No.68 Paiki ad-measuring 4695 sq.yds. It may be noted that after the Final Plot No.68 has been sanctioned there is further division of Final Plot No.68/1/B of 950 sq.yds. the same is the subject matter of the present appeals. (hereinafter referred to as `the suit land').

4.1(A) It may be noted that the plaintiff had taken the following lands on lease for the period of 979 years from one Jaysinh Chhotalal Sanghavi who happens to be the partner of M/s.Sulpani & Company.

Plot No.	Ad-measuring Area
68/1/B	950 sq.yards (suit land in question).
69/B/2	950 sq.yards
69/B/1	1140 sq.yards

and writing to that effect also came to be registered in the office of Sub-Registrar, Ahmedabad No.166/88, 9185/68, 1744/68 dated 1.11.1968 respectively.

4.2 The respondent No.1-original plaintiff is the Chairman of Balmukund Co-operative Housing Society Ltd.(hereinafter referred to as `the society'). The said society was registered on 10.3.1967. The said society is now represented by Govindbhai J.Chunvaliya - Chairman of the said society.

4.3 From the record, it appears that, originally Bai Jekor Patel daughter of Motilal Dalpatram was the owner of the said suit land. Bai Jekor had given the said suit

land on lease on 15.10.1934 to one Mr.Gajjar Ramanlal Gordhandas. The said lease was registered in this behalf. ThereaftAer said Shri Gajjar Ramanlal Gordhandas and others had given the said land on lease to one Marwadi Narsaji Chenaji. The said lease deed was registered on 13.2.1946.

4.4 As regards aforesaid land, Shri Narsaji Chenaji was in occupation and possession of the said suit land. Shri Narsaji Chenaji thereafter given the suit land on lease to one Bai Subhadra Patel daughter of Chandulal Gulabchand on 25.4.1947. The yearly rent of the said land was Rs.2,225/- and the said lease deed was also registered in this behalf. It has also come on record that as far as the said land viz. Final Plot No.68/1/B ad-measuring 950 Sq.yards concerned Bai Subhadra has executed an agreement of lease on 29.3.66 in favour of M/s.Sulphanie & Company.

CIVIL SUIT NO.1627 OF 1984 :

4.5 It has been stated by the plaintiff-society that an agreement of lease was executed on 28th December, 1967, between society through their Chairman Manharbhai Patel on one hand, second party Bai Subhadraben and the confirming party Sulpanie & Company. By the said agreement it was decided that the land of district Ahmedabad situated at Geeta Mandir Road of Rajpur Hirpur Sim of Survey No.405, Jamalpur Town Planning Scheme No.1, Final Plot No.68 paiki 4695 sq.yds was of the leasehold rights of Subhdaraben. Out of that it was decided that Final Plot No.68/1/B ad-measuring 950 sq.yds was given on lease by Bai Subhadraben to the society at the annual rent of Rs.325/- for 977 years. The said land was given on lease to the society by the aforesaid lease deed dated 28th December, 1967. The society also paid consideration for the year 1967 to 1968 and also paid Rs.812.50/- by way of deposit. It was decided that if society failed and neglect to make the payment of the lease then Subhadraben is entitled for possession of the land. It is the case of the society that by virtue of the said lease deed the society became the lessee of the said land in question. The total consideration of Rs.38,000/- was given and the details has been given in the said lease deed. In the said lease deed earlier lease deeds dated 15.10.1934, 13.2.1946, 25.4.1947 and 29.3.1966 were also referred to in this behalf.

4.6 It was a case of the plaintiff that plaintiff had taken the land on lease bearing Final Plot No.68/1/B (suit land), also Final Plot No. 69/B/1 and 69/B/2 of Jamalpur T.P.Scheme No.1 ad-measuring 2660 yards from

Keshrimal Chunilal and assignment deed of lease right in respect of 2/3 land i.e. 1334 sq.yds of Final Plot No.69/B had also taken place on 28.2.67 and had also taken land ad-measuring 4695 sq.yds of Survey No.405 of Sim land of village Rajpur - Hirpur by assignment deed on 28.12.67 from one Subhadraben Chandulal Gulabchand and thus the plaintiff was in possession of the land of Survey No.405 and land of Final Plot No.68/1/B, 69/B/1 and 69/B/2 and the boundary of the property of plaintiff extends upto public road towards east.

4.7 It is the case of the plaintiff that somewhere on 2nd December, 1983, Bai Lakhu Motibhai - defendant No.1, Dungarshi Motibhai since deceased through his heirs and legal representatives - defendant no.2 and Vasantbhai Alajibhai Vaghela since deceased through his heirs and legal representatives - defendant No.3 (hereinafter referred to as `the defendants') in the said suit have encroached the land of the plaintiff's society by constructing kuchcha hut ad-measuring 10' x 10' and also made pan cabin. It was contention of the plaintiff that defendants are not the tenants or licencee of the plaintiff and nor they have any right, title or interest in the said land.

4.8 It was the case of the plaintiff that defendants (in the said suit) by committing trespass constructed pucca ordi and started flour-mill in the land of Final Plot No.68/1/B and the defendants have not paid any heed to remove the encroachment caused and therefore with no option the aforesaid suit was filed for removal of encroachment and for obtaining the possession of the land in question.

4.9 In the said suit the defendants have resisted the suit of the plaintiff by filing reply at Exh.18 wherein they have contended that the suit of the plaintiff is not true and it is not admitted by them. It was the case of the defendants that they are not parties to the deeds on which the plaintiff has based its case and therefore it is not binding to them. It was their case that they are in possession of the land since 1967 and became owner of the land by adverse possession and therefore also the plaintiff has no right to take possession of the land in question. The defendants also denied that they are trespassers of the suit land in this behalf.

4.10 The learned City Civil Judge thereafter considered the evidence on record and ultimately by his judgment and decree dated 6th May, 1999, arrived at the following findings:

(1) The plaintiff proved that defendants encroached upon the land belonging to the plaintiff society.

(2) The plaintiff proved that the pan-cabin and hut of defendants stand on the land of the society.

(3) The plaintiff proved that the defendants have illegally made pucca ordi and started flour-mill in the land of Final Plot No.68/1/B.

(4) The defendants failed to prove that they became owners of the disputed land by adverse possession.

4.11 Ultimately the learned City Civil Judge by his impugned judgment and decree dated 28.1.99 allowed the suit and directed that the defendants are ordered to remove pan-cabin, small hut as well as pucca ordi wherein they run flour-mill and do hand over vacant and peaceful possession of the land encroached to the plaintiff within four weeks from the date of the order.

5. Facts regarding Civil Suit No.2500 of 1993.

5.1 It may be noted that when the aforesaid suit was pending before the City Civil Court somewhere in 1993 originally the society had also filed suit against Vashrambhai Alajibhai since deceases through his heirs and legal representatives - defendant No.1, Vaghela Laxmiben Alajibhai - defendant No.2 and Vaghela Shantaben Vashrambhai - defendant No.3 in the said suit. In the said suit plaintiff contended that the society was registered on 17th March, 1967 and from 1967 the society had constructed about 66 flats on the said land and about 400 members are staying in the said society. In the said suit it was contended that the defendants are trying to encroach upon the land of the society and, therefore, the plaintiff filed a suit for injunction against the defendants regarding Final Plot No.68/1/B, 69/B/1, 69/B/2 that defendants may not construct anything on the said land and they may not prevent the society members to carry out construction in the suit land. The said suit was filed on 1.6.93.

5.2 It may be noted that originally suit was filed through administrator but ultimately society was

represented by Chairman afterwards. In the said suit the plaintiff filed various documents particularly 7/12 of the suit land to show that the society had a possession of the suit land in question and the lease deed which was executed between the parties, City Survey Hissa Form and others documents in this behalf.

5.3 In the Civil Suit No.2500/93 the defendants filed written statement at Ex.17. In the said written statement the defendants took up the contentions that they became owner and lessee of the suit land by the documents which was executed on 13.4.92 by the heirs of Subhadraben in their favour. It was contended that as per the documents dated 28.12.67 the society was not in possession and as society failed and neglect to make the payment and by virtue of document dated 13.4.92 they became the lessee of the land in question. They had also referred interim order dated 3.9.84 passed in Civil Suit No.1627/84. The said written statement was filed on 4.6.93. Thereafter the defendants produced document dated 13.4.92 also in this behalf. They have by separate list also produced notice dated 6.10.83 addressed by Bai Subhadraben to the society in which it has been stated that the society failed and neglect to make the payment and they desire to terminate the lease deed of the land in question. According to them they have not encroached the land of 950 sq.yds of Final Plot No.68/1/B in this behalf.

5.3(A) The plaintiff filed rejoinder at Ex.24 in this behalf. The plaintiff also produced various documents to show that plaintiff has exclusively possession of the suit land in question at Exh.100. At Exh.114 plaintiff has also produced certain documents in this behalf.

6. Special Civil Suit No.5393 of 1993:

6.1 It may be noted that originally administrator but thereafter the society filed another Civil Suit No.5393/93 against the heirs of Vashrambhai Alajibhai, Laxmiben Alajibhai (Bai Lakhu) and heirs of deceased Subhadraben. The plaintiff filed said suit for declaration that the lease deed dated 13.4.92 which has been stated earlier in the suit be declared as illegal, null and void in this behalf. The said suit was filed on 5.10.1993. In the said suit the plaintiff alleged that since 1967 the plaintiff's society had constructed about 66 flats and about 400 peoples are staying in the society. It was alleged that for some time in the year 1989 the management of the society was not properly administered and one Ramanbhai Mithabhai Rathod was

acting contrary to the interest of the society as the Chairman of the society and therefore society has also made a complaint and ultimately on 9.3.93 present administrator has been appointed. After the administrator was appointed he has tried to administer the society in question and also making proper arrangement for water and drainage and some repairing work in this behalf. As the defendants have tried to obstruct the said work, the plaintiff filed Civil Suit No.2500/93 before the City Civil Court for which I have already made reference in this behalf.

6.2 In the said suit it was one of the case that by document dated 13.4.92 they have taken on lease from the heirs of Subhadraben. It was their case that by playing fraud and collusion by defendant No.4 the then Chairman of the society Shri Ramanbhai Mithabhai Rathod, the defendants have transferred the leasehold right in question. The society's members and managing committee were not aware about the same and therefore the said lease deed dated 13.4.92 has been executed by playing fraud in this behalf and, therefore, the same be declared void and same is not binding on the society. After the administrator terms over the Chairman of the society has ultimately replaced in the said suit. In the said suit the plaintiff filed list at Exh.3 and produced voluminous documentary evidence on record to show that the said suit land belongs to the plaintiff's society in question. They have also referred to the lease deed dated 28.12.67 and other documents to show that the plaintiff had exclusively possession of the suit land in this behalf. It was also contended that as regards Civil Suit No.2500/93, the City Civil Court by its order dated 25.4.93 also granted injunction in favour of the society.

6.3 Being aggrieved by the said order the defendants filed Appeal From Order No.256/93 before this Court and the said Appeal From Order was also dismissed on 5.7.93 by this Court and in view of the same the interim order which was granted by the City Civil Court on 23.4.84 in Civil Suit No.1627/84 still continued in this behalf.

6.4 In the said suit the defendants filed written statement at Exh.21 and also reply to notice of motion at Exh.20. They have ultimately denied the case of the plaintiff in this behalf. They have reiterated what is stated in the earlier suit also in this behalf. They have relied upon the document dated 13.4.92. According to them as the society failed and neglect to make the payment to Subhadraben, she was entitled to the termination of lease deed. The defendants also produced

certain documents in this behalf.

6.5 In the said suit the plaintiff filed rejoinder at Exh.26. The plaintiff produced certain affidavits of their society members at Exh.27 to show that all the members are staying in the said society since several years in this behalf. There are about 25 affidavits were filed by the society members in this behalf. The plaintiff also produced list at Exh.61. According to them they have obtained Clear Title Certificate from one H.Desai & Company dated 14.7.78. They have also obtained permission of the Corporation to construct the flats. They have also obtained permission from the Corporation for constructing flat and also compound wall. They have also produced receipt of payment to show that the society had possession of the land in question.

6.6 Before the said suit on behalf of the society at Exh.76 Govindbhai J.Chunvaliya - Chairman of the society was examined to show that the plaintiff had possession of the land in question. The plaintiff also produced original village Form No.7/12 document at Exh.80 and also further documents at Exh.90. They have also produced original plan approved by the Corporation for construction of flat in this behalf at Exh.96 and 97. They have also filed application at Exh.99 production of various documents that the land in question was registered with the Corporation in this behalf.

6.7 On behalf of plaintiff at Exh.102 one Harshadbhai Chhotalal Bhatt the then administrator was also examined. The plaintiff further produced documents at Exh.103 and 104. The plaintiff also produced oral evidence of one Mr.Manish Verma, District Inspector of Land Records at Exh.106 who has produced the Map in question on 21.10.78.

6.8 On behalf of the defendants Laxmiben Aalajibhai was examined at Exh.108. The defendants also filed application at Exh.109 for examining relevant officers of the Corporation in this behalf. One Solanki Mohanbhai Dungarbhai neighbour of defendants is also examined at Exh.118. The defendants also filed application at Exh.112 for examining the relevant officers of the Corporation in this behalf. On behalf of the defendant One Mahendrabhai Shankerbhai Patel is examined at Exh.117 City Engineer of the Corporation. In fact he has supported the case of the plaintiff's society in this behalf. The plaintiff filed written arguments at Exh.120 in this behalf.

6.9 Before the judgment in the Civil Suits No.2500/93

& 5393/93 was pronounced the City Civil Court as I have indicated earlier given the judgment in Civil Suit No.1627/84 by judgment and decree dated 28.1.99. The findings of the learned City Civil Judge I have already recorded in this behalf.

High Court Proceedings:

6.10 Being aggrieved and dissatisfied with the said judgment and decree dated 28.1.99 passed in Civil Suit No.1627/84, when the aforesaid two suits pending for judgment, Bai Lakhu and others have filed First Appeal No.1307/99 before this Court. The said matter came up before this Court (Coram: M.S.Shah, J.) it was contended that the learned Judge ought to have given judgments of all the three suit instead of giving judgment in Civil Suit No.1627/84. Ultimately the learned Single Judge by judgment and order dated 6.5.99 held that the trial court has not decided the question about title to the land in question. As the said judgment was given without waiting the judgment of the aforesaid suits the learned Single Judge directed that the learned City Civil Judge will hear and decide the Civil Suits No.2500/93 and 5393/93 as expeditiously as possible by 31.12.1999. It was further held that both the plaintiff as well as defendants shall maintain status-quo as of today regarding the disputed property on the land in question.

6.11 Being aggrieved and dissatisfied with the aforesaid judgment and order of the learned Single Judge, the defendants preferred Letters Patent Appeal being LPA No.,849/99 before this Court.

6.12 The Division Bench of this Court (Coram: M.R.Calla & R.R.Tripathi, JJ.) by its judgment and decree dated 19.9.2000 pleased to dismiss the appeal. The Division Bench also agreed that the findings of the learned Judge that other Suits No.2500/93 & 5393/93 ought to have been disposed by the learned trial Judge in this behalf.

6.13 Being aggrieved and dissatisfied with the said order the defendants filed Special Leave Petition under Article 136 of the Constitution of India before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court after gathering necessary facts of the case by its judgment and order dated 10.9.2002 pleased to observe as under:

"We are not inclined to interfere with the order under challenge. However, we observe in the

facts and circumstances of the case, the High Court may consider the appeal expeditiously preferably within a period of three months from today. The Special Leave Petition is dismissed."

Present Proceedings:

6.14 Meanwhile the learned City Civil Judge heard both the Civil Suits No.2500/93 & 5393/93 and delivered a judgment and decree on 30.11.99. The learned Judge by his impugned judgment held that plaintiff proved that it is in possession of land of Final Plot No.68/1/B ad-measuring 950 sq.yds in this behalf. It was further held that plaintiff proved that defendants have encroached on the land of Final Plot No.68/1/B. It was further held that the defendants failed and neglect to prove that they are owners of the land of Final Plot No.68/1/B. The plaintiff is entitled to permanent injunction as prayed for. The plaintiff is also entitled to vacant and peaceful possession of land of Final Plot No.68/1/B or the land encroached as prayed for. As regards other suit the learned Judge further held that the plaintiff failed to prove that sale deed dated 13.4.92 alleged to have been executed by heirs of Subhadraben in favour of defendant No.2 is illegal, null and void. However the learned Judge has held that by the said document right of collection of rent is transferred and further held that in view of the relief granted in Civil Suit No.2500/93 no further relief is required to be granted in the said suit.

6.15 Being aggrieved and dissatisfied with the said judgment and decree, the defendants filed First Appeals No.6/2000 & 7/2000 before this Court. As regards judgment and decree which was passed against the plaintiff, the plaintiff filed First Appeal No.551/2000 before this Court.

7. Mr.Y.S.Lakhani, learned advocate appeared on behalf of the appellants - original defendants and Govindbhai J.Chunvaliya appeared as party-in-person Chairman on behalf of the society.

8. Learned advocate for the appellants original defendants has relied upon the oral evidence of Laxmiben Alajibhai at Exh.108 in support of their contention. From the said evidence he has stated that the contention of the plaintiff that the document dated 13th April, 1992, was executed fraudulently in collusion with the original owner is not right. He has also relied upon the evidence of Solanki Mohanbhai Dungarbhai at Exh.111 who

also happened to be relative of Laxmiben.

8.1 Mr. Lakhani, learned advocate for the defendants has submitted that the plaintiff's society entered into the lease deed of suit land Nos.68/1/B, 69/1/B/2 & 69/B/1 for 967 years somewhere in December 1967 from Bai Subhadraben C.Patel confirming party Sulpani & Co. The said lease deed was executed on 28.12.1967.

8.1(A) It was submitted that the said lease deed provides inter-alia that if the society fails to pay the rent including suit land the owner has right to cancel the suit land as per para 4 of the said agreement. It is the case of the defendants that Subhadraben has not delivered the possession of the suit land to the society as per the averment in the agreement.

8.2 It is the case of the defendants that the plaintiff society failed to pay the lease rent towards the said plot for the last 23 years as the rent was not paid notice dated 6.10.1983 given by the advocate of Subhadraben to the society terminating the lease deed. The notice further contained demanding the outstanding lease rent and since the society failed to pay the outstanding lease rent, the lease right of the society came to an end on 7.12.1984.

8.3 It is the case of the defendants that, as regards Regular Civil Suit No.2500/93, the defendants contended that they were owners of the suit land pursuant to the registered sale deed dated 13.4.1992 and they were in possession of the suit land since long.

8.4 As regards Regular Civil Suit No.5393/93, the defendants resisted the suit contending inter-alia that the society was never in possession of the plot in question i.e. Final Plot No.68/1/B. It was their case before the Civil Court that the suit is not maintainable as the heirs of Subhadraben C.Patel has inter alia terminated the lease deed on 6.10.83, there is no privity of contract between society and heirs of Bai Subhadraben.

8.5 It is the case of the defendants that in a suit filed by the society though legal heirs of Bai Subhadraben are joined as a party defendants, no relief sought against them.

8.6 Learned advocate for the defendants submitted that the society has no locus-standi to file such suit as lease deed was already terminated and after termination the heirs of Bai Subhadraben has made registered sale

deed to the present defendants on 1.4.1992, the society cannot file suit to cancel the sale deed in which the society is not party and therefore also the society has no locus-standi to challenge the said action by way of filing suit.

8.7 It was the case of the defendants that the alleged documents sought to be relied by society which is executed between the society and Shulpani & Co. has no nexus with the present controversy. The defendants also relied upon written statement para 26 - 49, 50 of Civil Suit No.5393 of 1993 Exh.20. It was further submitted that the alleged mortgage deed which is sought to be relied by society, same is not part of pleading and as per the lease deed dated 20.12.1967 no leaseholds rights were transferred at any point of time to the society and, therefore, the so-called mortgage documents is rightly not considered by the trial court. As per the settled legal position of law the person cannot pass better title than he has.

8.8 It was further case of the defendants that for 23 years the society did not pay the rent to Subhadraben and therefore the lease deed between Subhadraben and society has been cancelled and thereafter Subhadraben entered into agreement with present defendants on 13.4.1992 by which the defendants become leasehold rights of the suit land.

8.9 It was further case of the defendants that as the society has not challenged the notice dated 6.10.83 terminating the lease deed the society has no locus-standi to file the suits and therefore the suit filed by the society ought to have been dismissed in this behalf. It was submitted that the defendants purchased the rights from Subhadraben after paying due consideration and therefore the said action is legal and valid. In fact the learned Judge has not declared the said sale deed was illegal and invalid in this behalf. There was no privity of contract between plaintiff society and the defendants and, therefore, also the society cannot challenge the said action in this behalf.

8.10 Learned advocate for the defendants further submitted that this case is a pure case of construction of documents and once by the said document of 1992 the defendants became the owner of the land and therefore the plaintiff society had no right to file the suit in this behalf without challenging the termination of notice in this behalf.

8.11 In support of the aforesaid contentions, Mr.Y.S.Lakhani, learned advocate for the appellants-defendants has relied upon the judgment of the Hon'ble Supreme Court in the case of DELHI DEVELOPMENT AUTHORITY vs. DURGA CHAND KAUSHISH reported in AIR 1973 SC 2609 particularly para 24 on page 2615 the Hon'ble Supreme Court has observed as under:

> "We think that the proviso to covenant No.9 could be said to suffer from the vice of an uncertainty which can only be removed by ignoring the words creating this uncertainty. We think that, in such a case, the ambiguous words can be disregarded so that the terms of the earlier operative part of the demise, which are clear must prevail."

8.12 He has further relied upon another judgment of the Hon'ble Apex Court in the case of SMT. NIRUPAMA GHOSH vs SMT. PURNIMA GHOSH AND ANOTHER reported in (1973) 3 SCC 411.

8.13 He has also relied upon another judgment of the Hon'ble Supreme Court in the case of KESHAV KUMAR SWARUP vs FLOWMORE PRIVATE LIMITED reported in (1994) 2 SCC 10 para 3 on page 12 the Hon'ble Supreme Court has observed as under:

> "In interpreting a document the intention of the parties has to be ascertained, if possible from the expressions used therein. More often than not, this causes no difficulty, but if difficulty is felt owing to inarticulate drafting or inadvertence or other causes, the intention may be gathered reading the entire document and, if so necessary, from other attending circumstances also. If through such a process then intention of the parties can be culled out consistently with the rule of law, the courts are required to take that course. Keeping these principles in mind, we may proceed to consider the facts of the instant case."

8.14 He has also relied upon the another judgment of the Hon'ble Supreme Court in the case of NARAMADABEN MAGANLAL THAKKER vs PRANJIVANDAS MAGANLAL THAKKER AND OTHERS reported in (1997) 2 SCC 255 para 3 on page 257 the Hon'ble Supreme Court has observed as under:

> "It is now well-settled legal position that a document has to be read harmoniously as a whole

giving effect to all the clauses contained in the document which manifest the intention of the persons who execute the document."

8.15 He has also relied upon another judgment of the Hon'ble Supreme Court in the case of STATE OF ORISSA AND ANOTHER vs. DAMODAR DAS reported in (1996) 2 SCC 216.

8.16 He has also relied upon another judgment of the Hon'ble Supreme Court in the case of USHA SUBBARAO vs. B.N.VISHVESWARAIAH AND OTHERS reported in (1996) 5 SCC 201.

Plaintiffs - Respondents Contentions:-

9. On behalf of the plaintiff's society, Shri Govindbhai J.Chunvalia, appeared as party-in-person (Chairman of the society). It has been submitted that the society obtained leasehold rights of Final Plot No.68/1/B on 28th December 1987 ad-measuring 950 sq.yd. of Survey No.405 & 406 from Subhadraben Chandulal Patel on lease assignment in Rs.38,000/- for 977 years in yearly nominal and token rent of Rs.325 by the registered documents and purchased the sale agreement right in Rs.14,250/- from Sulpanie & Company made a confirming party in this behalf. It was submitted that the owner Subhadraben C.Patel has accepted cheque dated 23.2.1968 of Rs.8000/- of forward dated on 28.12.1967 and as soon as the forward dated cheque of Rs.8000/- was cleared the possession of Final Plot No.68/1/B was handed over to society. Till then Final Plot No.68/1/B & 69/B are in possession of society without any intervance of obstruction.

9.1 In 1975 the society made compound wall surrounding Final Plot No.68/1/B, 69/B/1, 69/B/2 and made wooden gate at the entrance of the society on main road and made a room for watchman on Final Plot No.68/1/B. Thereafter the society obtained title clearance certificates of Final Plot No.68/1/B, 69/B/1, 69/B/2 from H.Desai & Company somewhere in July 1978.

9.2 It was further submitted that City Survey and Land Record Inspector made plan and report of Final Plot No.68/1/B, 69/B/1, 69/B/2 and reported the possession of the said plots are of society and the said report has been received on 21st October, 1978. The society thereafter obtained N.O.C. of Deputy Collector and Competent Officer, Ahmedabad on 9.2.1979 of Final Plot No.68/1/B, 69/B/1 & 69/B/2.

9.3 It was further submitted that from 1967 to 1979 the society had paid regularly yearly rent of Rs.325 to Subhadraben C.Patel and she has never claimed for any due rent during her livelihood. She died in 1979. The heirs of Subhadraben Patel did not accept the rent due to malafide intention. So society voluntarily sent the due rent from 1980 to 86 through R.P.A.D. cheque and requested to give the legal heir certificate to society which was refused by the heirs of Subhadraben Patel.

9.4 It is the case of the society that from 1978 to 8.8.1980 the society obtained legal plan, permission of construction on Final Plot No.68/1/B, 69/B/1 & 69/B/2 for construction of houses from Ahmedabad Municipal Corporation obtained Building Utilisation Certificate (BUC) from AMC of Final Plot No.68/1/B & 69/B No.BNB/2688/12 of A Block No.BNB/2772/15 of B Block & No.BNB/2773/6 of C Block of Total 66 members and since then members are living and using and enjoying Final Plot No.68/1/B & 69/B. It was further submitted that at present there is a society's room and ordi of watchman in Final Plot No.68/1/B and his family members are residing on the said plot. The society had also mortgaged the Final Plot No.68/1/B, 69/B/1 & 69/B/2 with Gujarat Housing Finance Corporation with registered mortgage deed dated 27.4.1979 and availed loan of Rs.5,56,000/-.

9.5 It is the case of the society that in 1984 as the defendants No.1 and 2 trespassed on half main entrance and gate of society and tumbled down one wooden door of gate and put cabin, pan galla and illegal encroach society's property and way, therefore society filed Civil Suit No.1627/84 for removing illegal encroachment and trespass and obtained stay on 3.9.84 of status-quo.

9.6 It is the further case of the society that the defendants purchased House No.10, Shreenagar Society in South of Final Plot No.68/1/B and violated interim stay and removed pan galla/cabin and made pacca ordi room on disputed land and started to encroach on Final Plot No.68/1/B from all three sides of East, North and South of societies property.

9.7 It is the case of the society that from 1989 to 1993 one Mr.R.M.Rathod was the Chairman and Secretary of the society. The said Chairman has high-handedly and capriciously worked and administrate the society's administration alone without calling any meeting or executing committee's from 1989 to 1993 so members complained to District Registrar who appointed administrator Mr.H.C.Bhatt. But during Mr.R.M.Rathod's

tenure the defendants and in collusion with Mr.Rathod so-called illegal sale deed of dated 13.4.92 of Final Plot No.68/1/B which came to know when Administrator file Civil Suit No.2500/93 against defendants. It is the case of the plaintiff society that the legal heirs of Subhadraben C.Patel or her advocate have not accepted rent and not supplied their certificate and no notice so called dated 6.10.83 was given to society or society has not received any notice and therefore the original lease deed is still in force and continued till date.

9.7(A) The party-in-person has also invited my attention to the voluminous evidence on record produced before the Civil Suit No.2500/93 alongwith Civil Suit No.5393/93. He has stated that even Civil Suit No.1627/84 the City Civil Court by its orders dated 3rd September, 1984, 23rd April, 1984 as well as 3rd September 1989 maintain the status-quo and thereafter in the present suit also i.e. Civil Suit No.2500/93 also granted interim injunction by its order dated 2.6.93 and the same was confirmed on 15th July, 1993. He has further submitted that being aggrieved and dissatisfied with the said order, Vashrambhai Vaghela filed Appeal from Order No.256/93 and this Court (Coram: B.S.Kapadia, J.) on 5th July, 1993, dismissed the appeal from order.

9.7(B) In view of the aforesaid facts and circumstances of the case he submitted that the status-quo which was granted earlier was continued throughout the proceedings in this behalf. He has also invited my attention to the reply filed by Vashrambhai notice of motion in the said suit. The reply merely of denial and only contention which has been raised that they had possession of the land in question since long time and they had obtained the possession from heirs of Subhadraben. They had also relied upon the earlier suit filed by them i.e. Civil Suit No.2500/93 also in this behalf. The said reply was filed on 26th October, 1993.

9.7(C) He has also relied upon Ex.61 where the bulky documentary evidence has been produced by the plaintiff particularly the title clearance certificate from H.Desai & Co. dated 14th July, 1978 and other relevant documents. The Commissioner report taken in Special Civil Suit No.2500/93, Map showing the disputed land in question. He has also referred to Ex.87 decree obtained in Special Civil Suit No.1627/84 by the plaintiff dated 28th January, 1989. He has also referred to Ex.88 the order of this Court in First Appeal No.1307/99 dated 6.5.99. He has also referred to Ex.83 the cheque sent by society to Subhadraben for Rs.1950/which has been

returned back cheque bearing dated 28th January 1986. He has also referred to the letter dated 28th January, 1986, addressed to Subhadraben for accepting the cheque at Exh.84. He has also relied upon the letter dated 30th June, 1986, by which he has sent the letter dated 28th June, 1986, to Subhadraben which has returned back and also at Exh.86 the registered acknowledgment which came back in this behalf.

9.8 It is the further case of the plaintiff's society that somewhere in June 1993 Mr.H.C.Bhatt, Administrator and members were restrained by defendants from enjoying and using Final Plot No.68/1/B so the plaintiff filed Civil Suit No.2500/93 for permanent injunction application in which defendants produce the copy of index so called sale deed dated 13.4.92 and copy of Ex.6 of stay application of Civil Suit No.1627/84 and society came to know the Civil Suit No.1627/84 and filed Civil Suit No.5393/93 for declaration suit of cancellation of sale deed dated 13.4.92. The said suit was filed as the so-called sale deed directly affect the rights and interest of society and members and their property and plots.

9.9 As stated above, the learned City Civil Judge by his judgment and decree dated 28th January, 1989, directed the defendants to vacate the illegal encroachment and trespass and to hand over the possession of land to society with specific observation that so-called sale deed dated 13.4.92 is nothing but only right of recovering yearly rent of Rs.325/- from society.

9.10 The learned City Civil Judge by his judgment and decree dated 30th November, 1999, allowed the Civil suit No.2500/93 but dismissed the Civil Suit No.5393/93 with specific observation that so-called sale deed dated 13.4.92 is nothing but right of recovering of rent of Rs.325/- yearly from society so society filed First Appeal No.551/2000 and, therefore, all these appeals were heard together by him in this behalf.

C.R.A. 222/2002 :-

9.11 The plaintiff's society further pointed out that after the judgment on 6.5.89 in Civil Suit No.1627/84, the plaintiff filed Execution Petition before the City Civil Court being Execution Petition No.627/2000 for executing the decree in this behalf.

9.12 In that Execution Petition the learned City Civil Judge, Court No.15, Ahmedabad in Execution Petition

No.627/2000 held that the Court Commissioner named by the Registrar be appointed from the panel of staff members and/or from the panel of advocates to execute the order for the removal of the disputed property encroachment mentioned in Column No.7 with regard to the decree passed in C.S.No.1627/84 and thereafter to hand over the peaceful and vacant possession of the said premises to the judgment creditor society.

9.13 Being aggrieved and dissatisfied with the said judgment and order, Bai Lakhu and others have filed Civil Revision Application being Civil Revision Application No.222/02 before this Court on 22nd February, 2002.

10. When the aforesaid Civil Revision Application placed for hearing before this Court, on 27.2.2002 this Court (Coram: Sharad D.Dave, J.) directed that this Civil Revision Application may also be heard alongwith First Appeals No.6/2000 & 7/2000. Thereafter when matter came up before Justice D.K.Trivedi on 18th March, 2002, also directed that in view of the order passed in Civil Revision Application No.222/02 dated 27th February, 2002, Civil Application in Civil Revision Application may also be taken up with first appeals. That is how the revision application with Civil Application is also placed for hearing before this Court.

11. The party-in-person further submitted that the society had purchased Final Plot No.68/1/B, 69/B/1 and 69/B/2 from 1967 and till then it is in possession of society as lessee. The defendants have tried to encroach and dispossess the society's Final Plot No.68/1/B from 1984 to till date and are continued and it is most necessary to remove illegal encroachment and illegal trespass and obstruction in half of main entrance and gate and on the way of go and fro of society and members as per order dated 20.2.2002 in Execution Petition No.627/2000.

11.1 It is the case of the society that the defendants have no privity of contract or society is not confirming party in so-called sale deed dated 13.4.1992. The heirs of Subhadraben C.Patel had also no right to transfer Final Plot No.68/1/B as they have no leasehold rights. It was further submitted that the so-called sale deed dated 13.4.92 "Per Se" that the possession of Final Plot No.68/1/B is and was lying with Balmukund Society page No.10, para 9 of Sale Deed and the heirs of Subhadraben C.Patel have given only right of recovering rent of Rs.325/- yearly from the society, therefore the defendants can not claimed as owner of Final Plot No.68/1/B.

11.2 It is the case of the society that the society had purchased the Final Plot No.68/1/B, 69/B/1 and 69/B/2 in 1967 and till then the said plots are one and same undividable property and plot of society in records of rights and obtained legal N.A., N.O.C. and permission of construction, BUC and protected the said plots and property with compound wall since last so many years. It is the case of the society that about 66 family members are residing and enjoying the Final Plot No.68/1/B & 69/B and there is a main entrance and gate society's room for watchman on Final Plot No.68/1/B wherein wathcman's family members were residing.

11.3 It was further submitted that the original lease deeds of 1967 is in existence without any interruption which are purchased after giving huge consideration to owners and no one owner had terminated the lease deed by any way of court or any procedure or notice. As the said notice dated 6.10.1983 was not served to the society, the society can not challenge the said notice in this behalf. The said notice was not received by the society and therefore the contention of the defendants that in absence of the said challenge the suit is not maintainable is not correct proposition of law.

11.4 It was further submitted that during the tenure and livelihood of Subhadraben C.Patel the society had paid four years advance yearly rent of Rs.325/- at the time of lease deed and regularly paid rent. Subhadraben C.Patel had never complained or claimed for any due rent during her livelihood. After her death in about 1979 society had asked for legal heir certificate and death certificate of Subhadraben C.Patel and that certificates not supplied in this behalf. The society had requested through letter dated 28.6.86 and sent due rent of 6 years of Rs.1950/- through cheque of Ahmedabad District Co-operative Bank which was refused by the heirs of Subhadraben C.Patel.

11.5 It is the case of the plaintiff's society that the defendants No.1 to 4 made hands in gloves and in collusion not accept the due rent with malafide intention to make illegal act and deed to lebell illegal encroachment and trespass as legal in Civil Suit No.1627/84. The defendants were knowing very well in 1984 in Civil Suit No.1627/84 that Final Plot No.68/1/B is in possession of Balmukund Society in this behalf.

11.6 It was further submitted that the society was always ready and willing to pay regular yearly rent of

Rs.325/- to original owner but due to unavailability of legal heir certificate and death certificate of Subhadraben C.Patel, the society can not give the rent to unauthorised person. The defendants had made so-called sale deed dated 13.4.1992 in which the conditions are harsh and against the original conditions of original lease deed of 1967 and so the same is required to be cancelled in this behalf.

11.6(A) The party-in-person has also relied upon the oral evidence of Govindbhai J.Chunvaliya who is also party-in-person before this Court at Exh.75. By the oral evidence he has produced original form No.7/12 copy of Final Plot No.68 at Exh.81 and also City Hissa Form No.4 which has been given from the Government in connection with T.P.Scheme No.1 of Plot No.68 and 69 where the society has to be held as the possession of the suit land in question by Exh.82. He has also relied upon Exhs.83, 84, 85, 86, 87 & 88 for which I have made reference earlier in this behalf to show that the society had possession. He has stated that the construction of the society was from 1975 to 1978, the society had possession of Final Plot No.68/1/B and society had also constructed compound wall in this behalf. He has produced necessary bills in this behalf. He has also produced record of rights and also stated that the land in question was mortgaged with the Gujarat Housing Finance Corporation. All these evidence according to him goes to show that the society had possession of the land in question. He has also relied upon the permission given by Ahmedabad Municipal Corporation for constructing the building on 16th May, 1973 and the said plan was also produced in this behalf at Exh.98. He has also produced the Map showing the possession of the plot No.68/1/B by the society in this behalf.

11.6(B) He has also relied upon oral evidence of Harshadbhai Chhotalal Bhatt at Exh.102 who was at the relevant time administrator of the society in this behalf. He has stated that the defendant has obtained the Plot No.68/1/B from the heirs of Subhadraben illegally and they came to know only when after filed reply in Civil Suit No.2500/93. He stated that he has been appointed administrator on 26th February, 1993, whereas the document was executed on 13th April, 1992 in collusion with the then Chairman and Secretary of the society. The society has also produced oral evidence of Manish Verma, District Inspector Land Records at Exh.106. He has produced the Map showing the Final Plot No.68 and 69 in this behalf. He has identified the signature of J.D.Shah who had prepared the Map on 21st October, 1978.

He has also relied upon the oral evidence of Mahendrabhai M.Patel at Exh.117 who was a City Engineer at the relevant time in the Ahmedabad Municipal Corporation. He has stated that the water line supplied to plaintiff's society was going to Shreenagar society also. The society had also obtained the drainage connection also in this behalf. He has also produced Map at Exh.119 by which water line and drainage line has been supplied to the society in this behalf. In fact he has submited that the society had constructed building in 1967.

11.7 In support of the aforesaid contentions, party-in-person has relied upon the Full Bench judgment of the Orissa High Court in the case of KESHAB CHANDRA NAYAK vs. LAXMIDHAR NAYAK AND OTHERS reported in AIR 1993 Orissa 1.

11.8 He has also relied upon another judgment of the Delhi High Court in the case of SANJAY KAUSHISH vs. D.C.KAUSHISH AND OTHERS reported in AIR 1992 Delhi 118 in para 43 on page 129 the Court has held as under:

> "Be that as it may, in my view, the well-settled principle of law is that if a particular document or decree is void the person affected by the said document or decree can very well ignore the same and file a suit seeking substantive relief which may be available to him without seeking any declaration that the said decree or document is void or any consequential relief of cancellation of the same."

11.9 He has also relied upon the judgment in the case of KUNDAN LAN AND OTHERS vs. HUKAM SINGH AND OTHERS reported in AIR (39) 1952 Punjab 115.

11.10 He has also relied upon another judgment of the Calcutta High Court in the case of AMAR KRISHNA MUKHERJEE vs. SMT.ASHA RANI GHOSH AND OTHERS reported in AIR 1985 Calcutta 398.

11.11 The party-in-person has relied upon the written submissions made by City Civil Court at Exh.120 in this behalf. He has also relied upon the judgment in the case reported in AIR 1976 Cal.238 in the case of Jyotirmoyee Debi Vs. Durgadas Banerjee and others. He stated that he has filed a suit for declaration and injunction and the statement made by the defendant cannot be relied upon because they are making contractual statement and the written statement is verbal evidence particularly as

stated above in this behalf.

MY CONCLUSION:

12. I have gone through the voluminous documentary evidence on record which has been produced by both plaintiff and defendants and the authorities cited by them in this behalf. I have also gone through the judgment of the learned Judge in Appeal. In my view the controversy centres around only on the fact that whether the defendants are the owners of Final Plot No.68/1/B ad-measuring 950 sq.yds. as alleged on the strength of sale deed dated 13th April, 1992. In other words the fate of both the suits hinged only on alleged sale deed Exh.116 dated 13.4.92 for a simple reason that if sale deed Exh.116 alleged to have been executed by the heirs of the deceased Subhadraben in favour of defendant No.2 be accepted then the defendant No.2 can be said to have acquired the leasehold rights of the disputed land or suit land. If that is so then defendants have not encroached on the suit land, and naturally they are entitled to restrain the plaintiff from making construction on the disputed land. If so plaintiffs are not entitled to permanent injunction or mandatory injunction. So controversy remains in a very narrow compass that what rights the defendants have derived by virtue of sale deed Exh.116 dated 13.4.92. In my view, looking to the documentary evidence produced by the plaintiff as well as oral evidence the plaintiff was & is in possession of the suit property in question as lessee. In fact the society had obtained the land after obtaining the certificate from H.Desai & Co. The land was also mortgaged with the Housing Finance Corporation and fact that the houses were constructed goes to show that the plaintiff society had possession of the land in question.

12.1 Only defence of the defendant is that they had obtained the sale deed Exh.116 dated 13.4.92. However in the said document on page 10 also in vernacular language it has been stated that the possession of the land in question is of the society. In view of the same plaintiff by relying upon sale deed dated 13.4.92 succeeded in establishing that the plaintiff is in possession of the suit property. Even after terminating tenancy in respect of suit property by Subhadraben the intervening lessee of suit property or after 13.4.92 it is not the case of the defendants that they have taken the possession of the suit property and, therefore, on the strength of their own sale deed it is clear that their say that they are in possession of suit property

prior to year 1967 is nothing but false version and therefore their case that they are owners of suit property by adverse possession is also incorrect and, therefore, to that extent the findings of the learned Judge I confirmed in this behalf. In my view no evidence has been produced by the defendants to show that they are in possession of the land in question. I hold that plaintiff proved that it is in possession of land of Final Plot No.68/1/B ad-measuring 950 sq.yards in this behalf. How the plaintiff's society has obtained the lease of Final Plot No.68/1/B ad-measuring 950 sq.yards for 999 years from Subhadraben daughter of Chandulal Gulabchand gets support from what I have stated in paras 4.1, 4.1(A), 4.2, 4.3, 4.4, 4.5 & 4.6 in this behalf. This shows that the society had obtained possession of the land in question by executing lease deed dated 29th December 1967 at Exh.91.

12.2 According to the defendants by the sale deed dated 13.4.92 they have obtained leasehold rights of suit property from heirs of deceased Subhadraben but it is necessary to decide that whether in fact the defendants have leasehold rights of the land of Final Plot No.68/1/B or only the right to collect the rent of land was transferred and, therefore, it is necessary to read Exh.116 dated 13.4.92 between the lines and in that context it is necessary to refer the page No.8 of sale deed Exh.116 dated 13.4.92. The said contents shows that the owner has assigned right to recover rent to the purchaser. In view of the same it leaves no doubt that by virtue of sale deed dated Exh.116 dated 13.4.92 the defendants transferred the right of collection of rent of leased property only and even on page 7 of Exh.116 dated 13.4.92 also the same has been reiterated in this behalf. It is clear that the defendants were given right only to collect the rent of leased property and if necessary to obtain possession of leased property in this behalf. In view of the same the possession of the land in question is of the society. By virtue of Exh.116 dated 13.4.92 it cannot be said that the defendants became the owner of land of Final Plot No.68/1/B.

13. In my view following principles are relevant:

"The golden rule of construction is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention, the court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the

status and the training of the parties using the words have to be taken into consideration. It is to be borne in mind that many words may be used in more than one sense and that sense differs in different circumstances.

The rules of construction are designed to assist in ascertaining the intention of the parties, and the applicability of many such rules depends upon the mode of expression prevalent among those to whose language they are applied. The English rules of construction have grown up side by side with a very special law of property in a very artificial system of conveyancing and the success of those rules in giving effect to the real intention of those whose language they are used to interpret depends for that purpose not more upon their original fitness than upon the fact that English documents of a formal kind are ordinarily framed with a knowledge of the very rules of construction which are afterwards applied to them.

However, the forms in which tenancy rights are created in India are not uniform and they do not conform to precedents known to conveyancing.

Accordingly, the meaning of every word in an Indian document must always depend upon the setting in which it is placed, the subject to which it is related and the locality of the grantor, from which it receives its true shade of meaning, and deeds and contracts of the people of India ought to be liberally construed. Hence it has been held that the rules of the English mode of conveyancing cannot prevail over the conception of "sale" in the Transfer of Property Act 1882."

[Re. Halsbury's Laws of India Volume 9 in the heading Deeds and other Instruments on page 585 para 120.230 application of English rules of construction].

14. In view of the sizeable evidence produced by the plaintiff's society (respondent herein) the plaintiff was in possession of the property in question as lessee and therefore the decree passed by the learned City Civil Court in Regular Civil Suit No.2500/93 in favour of the plaintiff is confirmed and Appeal No.6/2000 filed by Vaghela Vashrambhai and others is dismissed. The

defendants, their agents, servants and persons claiming through them are hereby perpetually restrained from making any construction in the suit land i.e. Final Plot No.68/1/B. The defendants are hereby ordered to remove the encroachment made by them on the land of Final Plot No.68/1/B and to hand over vacant and peaceful possession of the land by removing all the encroachments made thereon.

15. However, in view of the sale deed executed dated 13th April, 1992, at Exh.116 so far as Regular Civil Suit No.5393/93 is concerned, the judgment and decree of the learned City Civil Court is confirmed and held that the defendant No.1 has only acquired right of collecting rent in respect of suit land and, therefore, as such the plaintiff is not entitled to get the relief of declaration that the sale deed Exh.116 dated 13th April, 1992, is illegal, null and void etc. In view of the judgment and decree passed in Regular Civil Suit No.2500/93 no further relief requires to be granted. In view of the same Appeal No.7/2000 is also rejected.

15.1 Though the society as alleged that the sale deed executed dated 13.4.92 Exh.116 has been obtained by the defendants in collusion with the then Chairman of the society, however, ultimately that contention has not been further reiterated during the suits and in fact there is no finding of the learned Judge in this behalf. In fact the learned Judge has held that the said sale deed is legal and valid. Before me also the party-in-person has not more emphasise about the sale deed being illegal and valid. In view of the same, I hold that the sale deed dated 13.4.92 is legal and valid.

15.2 In view of the aforesaid circumstances, First Appeals No.6/2000 and 7/2000 filed by the original defendants are also dismissed and judgment and decree of the learned Judge dated 30th November, 1999, in Civil Suit No.2500/93 and 5393/93 is confirmed.

15.3 In my view after terminating the lease of the society, Bai Subhadraben has not initiated any proceedings for obtaining possession of the suit property and, therefore, as such the said notice terminating the lease is waived.

15.4 In view of the same, the First Appeal Nos.6/2000 and 7/2000 filed by Vaghela Vashrambhai Alajibhai and others are dismissed and judgment and decree dated 30th November, 1999, passed by learned City Civil Judge, Court No.24, Ahmedabad, in Civil Suit Nos.2500/93 and 5393/93

is confirmed. The First Appeal No.551/2000 filed by the society is also dismissed in view of the observations contained therein that the suit of the plaintiff i.e. Regular Civil Suit No.2500/93 is hereby allowed and the defendants their agents, servants and persons claiming through them are hereby perpetually restrained from making any construction in the suit land i.e. Final Plot No.68/1/B. The defendants are also hereby ordered to remove the encroachment made by them on the land of Final Plot No.68/1/B and to hand over vacant and peaceful possession of the land by removing all the encroachments made thereon within three months from the date of judgment. So far Regular Civil Suit No.5393/93 is concerned, it is hereby ordered that defendant No.1 has only acquired right of collecting rent in respect of suit land and, therefore, as such the plaintiff is not entitled to get the relief of declaration that the sale deed Exh.116 dated 13th April, 1992 is illegal, null and void etc. and in view of the granting reliefs in Regular Civil Suit No.2500/93, no further relief requires to be granted. The parties are ordered to bear their own costs. Decree accordingly.

15.5 In view of the aforesaid findings, Civil Revision Application No.222 of 2002 filed by the original defendants is also rejected. The judgment and order dated 28th February, 2002, passed by the learned Judge, City Civil Court, Court No.15, Ahmedabad in Execution Petition No.627/2000 passed below Exh.1 is confirmed. In view of this, no order on Civil Application No.2133 of 2002 in Civil Revision Application No.222 of 2002.

(K.M. Mehta, J.)

16. After pronouncement of the aforesaid judgment, Mr.Dagli, learned advocate for Mr.Y.S.Lakhani in First Appeal Nos.6/2000 and 7/2000 and Mr.M.J.Shelat, learned advocate in Civil Revision Application No.222/02 prayed that the stay which was granted earlier may be continued for about eight weeks. Mr.Govindbhai J.Chunvaliya party in person has strongly opposed to the same. He stated that in Civil Application No.934/2000 this Court (Coram: M.S.Parikh, J.) was pleased to pass operative order on 7.8.2000 as under:

"The respondents are directed not to transfer in any manner the land in question and to keep it open without making any further construction and they shall not obstruct the passage of the plaintiff's society as also the use of the land

in question by the members of the plaintiff society, till the final disposal of the appeal. Rule made absolute with no order as to costs."

16.1 Party-in-person has no objection if this order is continued for a period upto 30th August, 2002.

16.2 As regards Civil Revision Application No.222/2002 this Court (Coram: Justice S.D.Dave) has granted stay of execution petition No.627 of 2000, at the admission stage of Civil Revision Application and the same may be continued till 30.8.2002.

16.3 In the aforesaid circumstances, party-in-person also assured this Court that he will not file necessary execution petition before trial court before 30/8/2002.

16.4 In view of the same, interim order passed by My Brother Justice M.S.Parikh which I have quoted above will continue upto 30/8/2002 and also the order in C.R.A. No.222/02 which was granted by this Court will continue till 30/8/2002.

(K.M. Mehta, J.)

pkn/syed